09-29-06

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

van Weeghel et al.

Serial No.: 10/791,152

Filed: March 1, 2004

For: DETERMINATION AND QUANTIFICATION OF RED BLOOD CELL POPULATIONS IN SAMPLES

Confirmation No.: 3166

Examiner: G. Gabel

Group Art Unit: 1645

Attorney Docket No.: 2183-6372US

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RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Office Communication mailed July 28, 2006 has been received and reviewed. Claims 1-20 are pending in the application. Claims 1-20 were subjected to restriction. Applicants provisionally elect, with traverse, to prosecute the claims of Group II, *i.e.*, claims 12-17.

The reason for traversal is that Group I and Group II, although classified in different classes in the Communication, are not in different fields of search. According to MPEP § 808.02, the Examiner, in order to require restriction, has the burden of showing that the inventions subject to restriction are in different fields of search. Group II (claims 12-17) and Group I (claims 1-11 and 18) are related as product and process of use. Independent claim 12 recites a diagnostic kit "comprising a first marker agent reactive with a first component of a red blood cell, and a

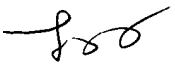
second marker reagent reactive with a second component of a red blood cell." Independent claim 1 recites a method using "a first marker agent reactive with a first component of a red blood cell", and "a second marker reagent reactive with a second component of a red blood cell". It is evident that any search for claim 12 would be coextensive with claim 1. In other words, a search on the product claims of Group II should give all relevant art for the methods claims of Group I.

Moreover, this application is a continuation of International Application No. PCT/NL/02/00579, for which was performed a PCT international search report, dated July 11, 2002. As such, the search burden on the Patent Office should be substantially decreased. Therefore, the restriction requirement between Group I and II should be withdrawn.

However, should the restriction requirement be made final, rejoinder of the method claims is respectfully requested upon allowance of the product claims.

If questions should remain after consideration of the foregoing, the Examiner is kindly requested to contact applicants' agent at the address or telephone number given herein.

Respectfully submitted,



Li Feng, Ph.D.
Registration No. 57,292
Agent for Applicants
TRASKBRITT, PC
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: September 28, 2006